

11621  
RECORDATION NO. 11621 Filed 1425

LAW OFFICES

APR 1 - 1980 - 9 32 AM McDERMOTT & PARKS

SANFORD, NORTH CAROLINA 27330

11621

GEORGE M. McDERMOTT  
OWEN TRACY PARKS, III  
INTERSTATE COMMERCE COMMISSION

P. O. BOX 637

RECORDATION NO. Filed 1425

775-7137  
AREA CODE 919

March 25, 1980

APR 1 - 1980 - 9 32 AM

INTERSTATE COMMERCE COMMISSION

0-092AG13

Interstate Commerce Commission  
12th & Constitution, N.W.  
Washington, D. C. 20423

11621  
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APR 1 1980

Fee 0 150.00

Attention: Ms. Mildred Lee  
Room 2303

INTERSTATE COMMERCE COMMISSION

DCS Washington, D. C.

Dear Ms. Lee:

Enclosed for recordation please find duplicate originals of the following to be recorded in the order as hereinafter set out:

(1) Lease dated December 28, 1979 from Atlantic & Western Financial Corporation to Atlantic and Western Railway Company.

(2) Lease dated March 20, 1980 from Atlantic & Western Financial Corporation to Atlantic and Western Railway Company.

(3) Chattel Mortgage, Assignment and Security Agreement from Atlantic & Western Financial Corporation to North Carolina National Bank and The Carolina Bank.

Also enclosed is our check in the sum of \$150.00 for the recording of these instruments pursuant to your telephone advice as to the recording fees.

Upon recordation, please return a true recorded copy of each of the instruments to McDermott & Parks, P. O. Box 637, Sanford, N. C. 27330.

Thank you very much for your assistance in this matter. It is always nice to deal with a fellow North Carolinian.

Sincerely,

O. Tracy Parks, III

O. Tracy Parks, III

APR 1 9 32 AM '80  
FEDERAL  
OPERATION BR.  
RECEIVED

OTP:fbp

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/2/80

OFFICE OF THE SECRETARY

McDermott & Parks  
P.O.Box 637  
Saford, N.C. 27330

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/1/80 at 9:35am, and assigned re-recording number(s). 11621, 11621-A, 11621-B

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

11621

RECORDATION NO. .... Filed 1425

LEASE AGREEMENT APR 1 - 1980 - 9 25 AM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT is made this 28th day of December, 1979, between ATLANTIC & WESTERN FINANCIAL CORPORATION (hereafter AWF), a Delaware corporation, as Lessor, and ATLANTIC AND WESTERN RAILWAY COMPANY (hereafter ATW), a North Carolina corporation, as Lessee.

1. Scope of Agreement

A. AWF agrees to lease to ATW, and ATW agrees to lease from AWF, thirty-five 50 ft. 6 in., 70 ton XP boxcars bearing recording numbers and marks as follows: ATW4165 to and including 4199 (hereinafter referred to collectively as the Cars).

B. It is the intent of the parties to this Agreement that AWF shall be and remain at all times the Lessor of all Cars unless this status changes in accordance with the provisions of this Agreement. ATW agrees that it will at no time take any action or file any document which is in conflict with this intent.

2. Term

A. This Agreement shall be for a period of ten (10) years commencing upon the date when all Cars have been delivered as set out in Section 3.

B. AWF shall have the right to cancel this Agreement upon written notice to ATW in the event car utilization does not meet the expectations of AWF. In the event of such cancellation AWF shall have the right to possession of all Cars heretofore leased to ATW under the terms of this Agreement, and shall have the option to enter the premises owned, or under the control of, ATW where said Cars are located for the purpose of taking possession of said Cars.

3. Delivery

The Cars shall be considered as delivered to ATW when AWF accepts delivery at the manufacturer's plant.

4. Agent

AWF shall act as ATW's agent in handling car registration, maintenance and record keeping functions involving the Cars including but not limited to AAR Billing and Car Hire. Correspondence from railroads using or repairing such Cars shall be addressed to ATW at such address as AWF shall elect.

## 5. Maintenance and Taxes

AWF shall be responsible for all costs, expenses, fees and charges incurred in connection with the use of the Cars except that in the event any Car is damaged or destroyed after delivery to ATW its repair or replacement shall be the responsibility of ATW pursuant, where applicable, to the Association of American Railroads Interchange Rules.

## 6. Lease Rental

The rental payable to AWF by ATW shall be the sum of all revenues earned by the Cars, including incentive per diem revenues, if any, less \$1.00 per car per day while the Cars are off line of ATW and in service subject to the Association of American Railroads Car Hire and Car Service Rules

## 7. Assignment

All rights of ATW hereunder may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, without notice to ATW. If AWF assigns this Lease or the rentals due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by AWF hereunder shall excuse performance by ATW of any provision hereof. No such assignee shall be obligated to perform any duty, covenant or condition required to be performed by ATW under the terms of this Lease.

## 8. Modifications and Amendments

Any modifications or amendments to this Agreement shall be accomplished only by a writing signed by all of the parties hereto.

IN WITNESS WHEREOF, AWF and ATW have duly executed this Agreement.

ATLANTIC & WESTERN FINANCIAL CORPORATION

By W. B. Joyce  
President

Attest:

O. Tracy Parker, Jr.  
Secretary

ATLANTIC AND WESTERN RAILWAY COMPANY

By W. B. Joyce  
Vice-President

Attest:

Thomas J. Smith  
Assistant Secretary

NORTH CAROLINA  
LEE COUNTY

I, Virginia Harrington, a notary public, do hereby certify that O. Tracy Parks, III, personally appeared before me this day and acknowledged that he is the Secretary of Atlantic & Western Financial Corporation, a Delaware corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its corporate name by its President, sealed with its corporate seal, and attested by him as its Secretary.

Witness my hand and notarial seal this 28th day of December, 1979.

Virginia Harrington  
Notary Public

My Commission Expires:  
November 21, 1984

NORTH CAROLINA  
LEE COUNTY

I, Pauline M. Collins, a notary public do hereby certify that W. B. Joyce, personally came before me this day and acknowledged that he is Vice-President of Atlantic and Western Railway Company, a North Carolina corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its corporate name by him, sealed with the corporate seal, and attested by its Assistant Secretary.

Witness my hand and notarial seal this 28th day of December, 1979.

Pauline M Collins  
Notary Public

My Commission Expires:  
December 10, 1984